

Remarks/Arguments

1. The specification is being amended to correct an erroneous filing date for the Provisional Application identified as a related application at page 1 and to change the identification of the various figures of the drawing, in view of the corrected drawings being submitted. Because these corrections extend throughout the specification, applicant is submitting herewith a complete substitute specification, except for claims and Abstract, and specifically is submitting a substitute specification with the changes highlighted and a clean version of the substitute specification. Acceptance of the substitute specification is therefore requested.
2. The Examiner has objected to the drawing, under 37 CFR §1.84(p)(4), because the reference character "181" in FIG. 2 should read "190" (Examiner's recommendation), and reference character "172" in FIG. 5 has not been mentioned in the description. Applicant is adopting the Examiner's suggestion regarding reference character "190" and is deleting reference character "172" from the drawing. In addition, an erroneous cross-reference to "FIG. 4" in FIG. 2 has been discovered and corrected. In order to improve readability, FIGS. 4a, 4b, and 5-6 has been renumbered as FIGS. 4-7, respectfully, in both the drawing and the specification and are now consistently referred to as "FIG." in place of "Figure".
3. The Examiner has stated that applicant's provisional application fails to provide adequate support for the claims of this application. The criteria to be employed to determine whether an applicant is entitled to the provisional filing date was recently set forth by the Federal Circuit:

"... the test to determine if an application is to receive the benefit of an earlier filed application is whether a person of ordinary skill in the art would recognize that the applicant possessed what is claimed in the later filed application as of the filing date of the earlier filed application."

Noelle v. Lederman, 335 F.3d, 1343, 1348, 69 USPQ 2d 1508, 1513 (Fed. Cir. 2004)

Since there is currently no issue concerning the effective filing date of this application, applicant is not at this time contesting the Examiner's determination that his provisional application fails the test set forth above.

4. The Examiner also noted that applicant had failed to provide a list of documents with the information disclosure statement that was submitted. That IDS, in fact, merely transmitted the International Search Report that, in fact, did not identify any publications or other prior art.
5. The Examiner has rejected claims 1-3, 5, and 10-13 as being anticipated, under 35 USC 102(b), by Walker (US Patent 5,862,223). The Examiner has rejected claims 4 and 6-8 as being unpatentable, under 35 USC 103(a) over Walker in view of Grindlesperger (US Patent 6,397,197) and claim 9 as being unpatentable, under 35 USC 103(a) over Walker and Grindlesperger in further in view of the Hevner article "Phase Containment Metrics for Software Quality Improvement". In addition the Examiner rejected several of the claims, under 35 USC 112, second paragraph, as being indefinite.

In response to the Examiner's rejections applicant has cancelled claims 1-8 and 10-13, is replacing claim 1 with a new claim 14 and replacing claim 8 with a new claim 15, which is dependent on claim 14 and has amended claim 9 to depend from claim 14. Applicant has also added new dependent claims 16 to 20, all being dependent, directly or indirectly from new claim 14 and new independent claim 21. It is submitted that the informalities objected to by the Examiner, under Section 112, second paragraph, have been obviated by the new claim language.

6. In rejecting prior claim 1 as anticipated by Walker, the Examiner has characterized historical data as being equivalent to the Walker "expert qualifications". Similarly, in rejecting prior claim 5, the Examiner had characterized the Walker "detailed application and list of references as equivalent to applicant's historical metrics data.

Applicant respectfully disagrees. The terms "expert qualifications" and "detailed application list of references" as used in Walker possibly correspond to "personnel experience metrics" as described in applicant's specification at page 8, lines 1-4 (in the substitute specification paragraph [0020]). However, software metric data is a quantitative measure whereas expert qualifications and references are qualitative indicators that may require further interpretation. For example, there is nothing in Walker to suggest that "expert qualifications" could be extended to include the quantitative "software product metrics" of "size, time, effort, and defect" of the present invention as described in applicant's specification at page 8, lines 19-21 (in the specification at paragraph [0022]).

7. Similarly, applicant disagrees with the Examiner's characterization, with respect to prior claim 8 (which has been replaced by new claim 15) of the Grindlesperger "project milestones" as being equivalent to applicant's current project metrics.

The term "project milestones" as used in Grindlesperger would be understood by someone skilled in the art to refer to cost and schedule status for a project. There is nothing in Grindlesperger to suggest that "expert qualifications" could be extended to include the quantitative "software product metrics" of "size" or "defect" of the present invention as described in the previous specification at page 8, lines 19-21 and substitute specification paragraph [0022].

8. Finally, with respect to applicant's claim 9, the Examiner has further relied on the Hevner article. However, there is nothing in Hevner to teach or suggest that a bidder reveal software metrics to a contractor.
9. The Walker teaching and disclosure are directed to the problem of matching an expert who has specific qualifications with someone who is looking for such an expert. One faced with the problems to which applicant's invention is directed would not find any assistance in the apparatus and method for expert-user matching taught by Walker. Certainly Walker's disclosure is not an anticipation of applicant's

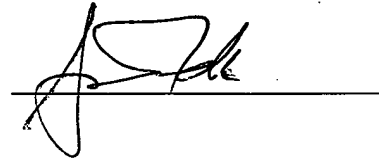
new claims, since to be an anticipation, 35 USC 103, means that the new claims read on the Walker apparatus and/or methods in the sense that they could be viewed as infringing the new claims. Clearly, such is not the case.

10. The Gindlesperger disclosure is directed to a method and system for competitive bidding and is narrowly directed to, as stated in the preamble of his claims, "competitive bidding by print information product vendors". His system is based on the concept of using a central server, which he identifies by the service mark PrintProSys and which serves to identify that particular print vendors are qualified. Thus this server itself identifies which of these has submitted the lowest bid price and is to be awarded to print contract. None of this is related to the use of software metric data, either historical or current, for use first in passing information to a contractor, which makes the selection of the software developer and then for continuous monitoring of the development as it progresses.
11. New independent claim 14 specifically recites the combination including retrieving previously stored historical software metric data at a central bidding server system, the central bidding server system generating a bid record and sending it along with the historical software metric data to the contractor system for use in the selection process, and then having the central bidding server system monitor the successful bidder's performance by collecting ongoing software metric data. Such a combination, relying upon software metric data, is not shown in or suggested by the references cited against the prior claims.
12. New claims 16-21 further distinguish from the references by specifying the nature of the historical software metric data in accordance with various embodiments of applicant's invention, claims 16-20 being dependent, directly or indirectly from new claim 14, while claim 21 is an independent claim.
13. Favorable consideration and allowance of new claims 9 and 14 through 21 and passage of this application to issue are therefore respectfully requested.

14. A petition for a one-month extension is requested herewith.
15. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner is invited to contact either Philip Kirkpatrick (Reg. No. 46,015) at (201) 393-2348 or the undersigned at the number given below.

Respectfully submitted,

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Amendments to the Drawing

1. The attached replacement sheets include changes to Figs. 2 and 5, as well as renumbering of previous Fig 4a as new Fig.4, previous Fig.4b as new Fig.5, previous Fig 5 as new Fig. 6, and previous Fig.6 as new Fig. 7.
2. In order enhance publication quality and consistency, a complete set of replacement sheets for all of the figures of the drawing is attached. No new matter has been added to the drawing.

Attachment: Replacement Figures 1-7